

Children's Law Center of Indiana



Termination of the Parent-Child Relationship

6/5/13

In **K.T.K. v. Indiana Dept. of Child Services**, 989 N.E.2d 1225 (Ind. 2013), the Indiana Supreme Court affirmed the trial court's order which terminated Mother's parental rights. *Id.* at 1228. Mother is the parent of three children, born on October 21, 2000; December 5, 2003; and April 13, 2009. The Dearborn County Department of Child Services (DCS) first became involved with Mother and her children in August 2009 when Mother tested positive for oxycodone yet failed to provide a recent prescription for the drug. On September 30, 2009, DCS received a report alleging that Mother had passed out in a car with her infant son and required assistance getting in and out of the car two days earlier. When DCS investigated the allegations, Mother denied having any recollection of the event, but admitted to having snorted hydrocodone and xanax that day. On October 2, 2009, DCS successfully petitioned to adjudicate all three children to be Children in Need of Services. The children were removed from Mother's home and, in the ensuing sixteen months, were placed in a total of five different living arrangements and, in some instances, were separated. In February 2011, all three children were placed with Foster Parents. Mother continued to use drugs and failed to cooperate with the recommended services offered by DCS after the children were removed from her care. Beginning in January 2010, Mother was incarcerated pending charges for theft and receipt of stolen property until July 2010. Two weeks after her release from prison, Mother was arrested for public intoxication and remained incarcerated until November 4, 2010.

On January 5, 2011, DCS filed a petition for involuntary termination of parental rights. The trial court heard evidence on the termination petition for three days and issued its Order on Final Termination Hearing on October 13, 2011. The Order provided in pertinent part:

1. The Children have been placed outside of the home for fifteen (15) of the last twenty-two (22) months.
2. There is a reasonable probability that the reasons for placement outside of the home will not be remedied in that:
 - a. Mother has a severe substance abuse addiction that will always present a risk of relapse, particularly in times of stress.
 - b. Mother's choices have created the circumstances that resulted in the Children's removal from the home and the court found these choices far more compelling than the late remedial efforts made by Mother.

- c. Mother's lack of commitment in the CHINS process until October 2010 demonstrates her lack of commitment to her children and shows a reasonable probability that she will fail them again.
 - d. Mother has a history of consistent disobedience of the law.
3. Termination of the parent-child relationship is in the Children's best interests because the Children's need for permanency is paramount.
 4. DCS has a plan for the Children's continued care and treatment, namely to have the Children adopted by their current Foster Parents.

Mother appealed. The Court of Appeals dismissed Mother's appeal due to her procedural missteps, but the Indiana Supreme Court granted Mother's petition for transfer, thereby setting aside the Court of Appeals order dismissing Mother's appeal.

The Court determined that the State met its burden to show that “the conditions that resulted in the child[ren]’s removal or the reasons for placement outside [Mother’s] home...will not be remedied” pursuant to IC 31-35-2-4(b)(2)(B)(i). *Id.* at 1234. The Court first ascertained the conditions resulting in the children's removal and their retention in foster care. *Id.* at 1232-33. The Court observed that DCS removed the children from Mother's home and placed them in foster care due to Mother's serious substance abuse issues, which rendered her incapable of providing the necessary care and supervision the children required. *Id.* at 1232. Among the evidence on Mother's substance abuse issues, the Court noted: (1) Mother's acknowledgement of her serious substance abuse problem; (2) Mother had snorted hydrocodone and xanax at the time of the children's removal; (3) Mother began taking illegal drugs at the age of fifteen, began using heroin regularly at the age of twenty-six, and had battled an addiction to prescription drugs for approximately seven years at the time DCS removed the children; (4) Mother's drug screens in the two months after the children's removal were all positive and showed that she had recently used hydrocodone, oxycodone, cocaine, benzodrine, morphine, and marijuana; (5) a staff therapist for Community Mental Health Center testified that Mother was recommended to attend three times the number of sessions for individuals with substance abuse issues than usually required. *Id.* The Court also found that the record reflects Mother's history for criminal behavior. *Id.* The Court said that the evidence clearly and convincingly support the trial court's finding that Mother has a “criminal mentality” that manifests itself in disregard for the law. *Id.* at 1233. The Court noted: (1) Mother's criminal activities resulted in nearly eleven months of incarceration during 2010, which required the children's continued placement in foster care; (2) in January 2010, Mother was incarcerated pending trial for charges of theft and receiving stolen property; (3) Mother was released in mid-July but was arrested again in August for public intoxication, remaining incarcerated until November 4, 2010; (4) Mother's criminal background included operating a vehicle while intoxicated convictions, multiple traffic citations including operating while intoxicated (prior), driving while suspended, and failure to abide by traffic laws, and probation violations that resulted in her probation

revocation; (5) the psychologist evaluator opined that “it is difficult to determine whether [Mother’s] criminal mentality has been altered and that “her criminal history is concerning and strongly suggests that she is not opposed to violating the law or societal expectations for selfish purposes.” Id.

Having determined the reasons for which the children were removed from Mother’s care, the Court found that the following evidence, inter alia, showed clearly and convincingly that a reasonable probability exists that the conditions that led to the children’s removal will not be remedied: (1) the DCS case manager explained that “history is a good indicator of the future” and her concerns were based on Mother’s substance abuse history and her criminal activity, [which] would be a good indicator...of what would happen and a good indicator for the children as to what could happen as well”; (2) a psychologist evaluator opined that “it is difficult to predict with certainty that [Mother] has truly turned her life around”, and that Mother “might not always be able to inhibit her impulses, and the fact that she has led a pretty risky lifestyle in the past...predisposes her to returning to that lifestyle if things become too stressful for her”; (3) a second psychologist evaluator, who prepared a written psychological and parenting review on Mother’s behalf, did not contradict the first evaluator’s conclusion, and testified that Mother’s likelihood of re-offending is more based on her ability to remain clean and sober. Id. at 1233-34. The Court also said that the trial court was within its discretion to “disregard the efforts Mother made only shortly before termination and to weigh more heavily Mother’s history of conduct prior to those efforts.” Id. at 1234.

The Court could not say that the trial court erred in concluding that termination of Mother’s parental rights was in the children’s best interests. Id. at 1236. The Court noted the following evidence in support of the trial court’s conclusion: (1) the children had been placed in five different living environments over a period of sixteen months and at times were separated; (2) the children’s home-based therapists testified that the children are doing better since being placed in Foster Parents’ home four months before the Court began hearing evidence on the termination petition, and that the uncertainty of where they were going to be had been troublesome to the children; (3) a psychologist evaluator testified that the children were more bonded with Foster Parents than would normally be expected in that short period of time and the children’s best interests would be served by allowing them to remain in Foster Parent’s care; (4) the guardian ad litem testified that termination was in the children’s best interests based on her concerns over the length of time that it took Mother to commit to a path of recovery and “the fact that the children just really need a permanent home”; (5) the family case manager supported termination because the children “need some sort of stable permanency and a drug free environment to grow and develop as normal kids deserve”; and (6) the family case manager testified that the children’s permanency needs would be satisfied by termination and adoption by Foster Parents. Id. at 1235. The Court quoted In Re A.C.B., 598 N.E.2d 570, 572 (Ind. Ct. App. 1992), which states that “[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children.” K.T.K. at 1235-36. The Court opined that, not only did Mother’s choice of conduct result in a substantial period of incarceration during the children’s young lives, but she deprived them of their youth and innocence by exposing them to her drug usage and—as their primary caretaker—jeopardized

their physical safety by neglecting to properly supervise them while she pursued her desire to continue using drugs. Id. at 1236.

The Court opined that Mother could not claim on appeal that the trial court erred in failing to grant her request for a change of judge. Id. at 1236. The Court noted that on January 20, 2011, Mother and her counsel had agreed to withdraw the Motion for Change of Judge, and the trial court accepted Mother's withdrawal of that motion. Id. The Court said that Mother could not claim error on the part of the trial court regarding a motion that Mother had voluntarily withdrawn. Id.